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and Icon NY Holdings LLC*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:
In re:	:
	:
SEARS HOLDING CORPORATION, et al.,¹	:
	:
Debtors.	:
	:
-----X	

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**STATEMENT AND REQUEST FOR CLARIFICATION OF ICON DE
HOLDINGS LLC AND ICON NY HOLDINGS LLC TO THE DEBTORS'
REVISED NOTICE OF CURE COSTS AND ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES IN CONNECTION WITH GLOBAL SALE TRANSACTION**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Icon DE Holdings LLC (“Icon DE”) and Icon NY Holdings LLC (“Icon NY,” and together with Icon DE, “Iconix”), parties in interest in the above-captioned chapter 11 cases, by and through its undersigned counsel, file this statement and request for clarification (the “Statement”) as to certain proposed cure costs (the “Proposed Cure Costs”) reflected in the *Notice of Filing Revised Proposed Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith and (IV) Granting Related Relief* [Docket No. 2332] (the “Revised Cure Notice”).² In support of this Statement, Iconix respectfully states as follows:

BACKGROUND

1. Iconix is a brand management company, with a portfolio of global consumer brands. Iconix licenses its brands to facilitate the manufacture, import, market, and sale of licensed products in retail locations. In furtherance of such, Iconix is a party to license agreements with Kmart Corporation (“Kmart”) and Sears, Roebuck and Co. (“Sears Roebuck” and together with Kmart, the “Debtor Counterparty”). Such agreements include the following:

- a. License Agreement, dated as of September 26, 2006, by and between Icon DE Holdings LLC (as successor to IP Holdings LLC), as licensor, and Kmart Corporation, as licensee, as amended by the First Amendment to License Agreement, dated as of August 1, 2015, and extended by letters dated as of June 29, 2010, June 12, 2015, August 14, 2015 and August 18, 2015 (the “Joe Boxer License Agreement”);
- b. License Agreement, dated as of February 8, 2010, by and between Icon DE (as successor to IP Holdings LLC), as licensor, and Sears (as assignee from Kmart), as licensee, as amended by the First Amendment to License Agreement, dated

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement (as defined below), the Cure Notice (as defined below), or the Revised Cure Notice, as applicable.

as of August 1, 2015 and the Second Amendment to License Agreement, dated as of January 23, 2018 (the “Bongo License Agreement”); and

- c. License Agreement, dated as of February 20, 2008, by and between Icon NY (as successor to and assignee from Official Pillowtex LLC), as licensor, and Kmart, as licensee, as extended by letters dated as of August 29, 2013 and July 24, 2018 (the “Cannon License Agreement” and together with the Joe Boxer License Agreement and Bongo License Agreement, the “Iconix License Agreements”).

2. Under the Iconix License Agreements, Icon NY and Icon DE respectively granted each Debtor Counterparty a license to the trademarks detailed in each Iconix License Agreement. Each Debtor Counterparty agreed to pay a quarterly royalty payment equal to a defined percentage of net sales of Licensed Products, with a defined minimum royalty amount due each year.

3. On October 15, 2018, and continuing thereafter, each of the above-captioned debtors and debtors in possession (the “Debtors”) filed voluntary petitions for relief under chapter 11, of Title 11, of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Court”). The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only pursuant to Federal Rule of Bankruptcy Procedure 1015(b) [Docket No. 118].

4. On January 14, 2019, the Debtors commenced an auction for the sale of the Assets (the “Auction”). At the conclusion of the Auction, the Debtors designated the bid submitted by Transform Holdco, LLC (the “Successful Bidder”) as the successful bid.

5. On January 17, 2019, the Debtors executed an asset purchase agreement (the “Asset Purchase Agreement”) with the Successful Bidder for the purchase of the Acquired Assets (as defined in the Asset Purchase Agreement).

6. On January 18, 2019, the Debtors filed the *Notice of Successful Bidder and Sale Hearing* [Docket No. 1730] and (ii) *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* [Docket No. 1731] (the “Cure Notice”), which sets forth the executory contracts and unexpired leases proposed to be potentially assigned or assumed and assigned to the Successful Bidder pursuant to the Asset Purchase Agreement. In the Cure Notice, the Debtors proposed to potentially assume and assign each of the Iconix License Agreements to the Successful Bidder.

7. On January 26, 2019, Icon NY and Icon DE filed a *Limited Objection to the Debtors’ Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* [Docket No. 2000] to the cure amounts listed in the Cure Notice with respect to all three of the Iconix License Agreements.³

8. On February 1, 2019, the Debtors filed the Revised Cure Notice. In Exhibit B to the Revised Cure Notice, the Debtors listed the Iconix License Agreements among the Initial Assumed Agreements to be assumed and assigned by the Debtors to the Successful Bidder. The Debtors listed the Proposed Cure Cost to be \$00.00 for each of the Iconix License Agreements.

9. The Debtors are in default of their monetary obligations under each of the Iconix License Agreements to pay royalties to Iconix.

STATEMENT AND REQUEST FOR CLARIFICATION

10. The Proposed Cure Costs listed in the revised Cure Notice for the Iconix License Agreements are incorrect. The Proposed Cure Costs do not include the amounts presently due and payable to Iconix under each of the Iconix License Agreements for quarterly royalties. Nor do the cure amounts listed include royalty payments that have accrued and will be payable after the

³ In Exhibit B of the Revised Cure Notice the Debtors incorrectly list that Icon NY did not file an objection to the Cure Notice.

assignment or any assurance that such amounts will be paid by the Successful Bidder, including yearly minimum guaranteed royalties.

11. Accordingly, Iconix does not object to the assumption and assignment of the Iconix License Agreements, provided that any order approving the assumption and assignment of such License (the “Assumption Order”) expressly provides that (1) all amounts due and payable as of the date of the entry of such order be paid within twenty-one (21) days following entry of the Assumption Order, and (2) the Successful Bidder (or the Debtors) shall pay any amount that becomes due and payable under the Iconix License Agreement after entry of the Assumption Order in accordance with the terms and conditions of the Iconix License Agreement. The amounts that are or will become due under each Iconix License Agreement that relate to the pre-assignment period are as follows:

Iconix License Agreement	Amount
Joe Boxer License Agreement	1) Amount due and payable today \$7,771,992.00 2) Pre-assumption and assignment, but not yet due: approximately \$200,000.00 (estimated awaiting January actuals)
Bongo License Agreement	1) Amount due and payable today: \$16,776.00 2) Pre-assumption and assignment amount, but not yet due: \$233,224.00
Cannon License Agreement	1) Amount due and payable today: \$205,849.00 2) Pre-assumption and assignment amount, but not yet due: \$3,926,001.00

RESERVATION OF RIGHTS

12. This Objection is filed with a full reservation of rights, including the right to supplement, modify or amend this Statement and make such other and further objections to the Revised Cure Notice or any assumption or assumption and assignment of the Iconix License Agreements until such time as a final order is entered approving the Proposed Cure Costs with

respect to the Iconix License Agreements. Nothing set forth herein shall constitute a waiver, discharge or disallowance of any and all rights, claims, causes of action and defense. In addition, nothing set forth herein shall be construed as a waiver, release, discharge or disallowance of any and all administrative claims of Iconix against the Debtors.

CONCLUSION

WHEREFORE, for the foregoing reasons, Iconix respectfully requests that any order approving the assumption and assignment of the Iconix License Agreements (i) provide that all amounts due and payable as of the date of the entry of such order be paid within twenty-one (21) days following entry of such order; (ii) provide that the Successful Bidder (or the Debtors) shall pay any amount that becomes due and payable under the Iconix License Agreement after entry of such an order in accordance with the terms and conditions of the Iconix License Agreement; and (iii) grant such other and further relief as the Court deems just and proper.

Dated: February 1, 2019
New York, New York

/s/ Gregg M. Galardi
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